
(1981) 12 AP CK 0011

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1266, etc. of 1981

S.N. Nagarajulu and Others

APPELLANT

Vs

Railway Board and Others

RESPONDENT

Date of Decision : 01-12-1981

Acts Referred:

Constitution of India, 1950 — Article 16, 311, 311(2)

Railway Servants (Discipline and Appeal) Rules, 1968 — Rule 6

Citation : (1982) 2 LLJ 53

Hon'ble Judges : Ramanujulu Naidu, J; Alladi Kuppuswamy, J

Bench : Division Bench

Judgement

Ramanujulu Naidu, J.—In this batch of writ petitions filed by members of the Loco Running Staff of the South Central Railway, orders passed by the Senior Divisional Personnel Officer, Guntakal, reverting them from higher posts to lower post are challenged. At the relevant time, the petitioners were working either as drivers "A" grade, "B" grade, "C" grade, or as shunters, diesel assistants and fireman "B" grade and "C" grade. They were officiating in the said posts from periods ranging between four months and eighteen months. The impugned orders were passed on different dates between 2-2-1981 and 7-2-1981 under the following circumstances :

The All India Loco Running Staff were making representations to the Railway Board as also to the authorities of the South Central Railway from time to time, that whereas other Railway employees had to work for a period of eight hours a day, no definite hours of work were fixed in respect of the loco running staff, that on several occasions they were asked to work continuously for twenty four hours also and that as a result of such continuous strenuous work not only the health of the loco running staff was impaired, but also the efficiency of the running of the trains was affected. In response to their agitation, it is alleged by the petitioner, a tripartite agreement was entered into between late Sri L. N. Mishra, the then Minister for railways, Sri K. V. Raghunatha Reddy, the then Minister for Labour and the All India Loco Running Staff Association, whereunder members of

the loco running staff were required to work only for ten hours a day. The agreement was to be implemented within six weeks from 13-8-73. As the agreement was, however, not implemented even after a lapse of eight years, the association decided to go on strike for implementation of the agreement and strike was commenced on 28/29-1-1981. It was claimed by the petitioners that they absented from duty with a view to avoid any tension and unnecessary rupture with the striking employees. All of them were, however, reverted to lower posts.

2. Sri Babulu Reddy, learned counsel for the petitioners, urges that the impugned orders were passed not in bona fide exercise of the power conferred upon the appointing authority, but passed with a view to punish the petitioners for abstaining from duty during the period of strike and that, in any event, the impugned orders were passed by the appointing authority, without applying his mind, mechanically on the directions issued by the superior authority, namely, the Railway Board and the Committee consisting of the Chief Operating Superintendent and the Deputy Chief Personnel Officer.

3. It is also submitted by Sri Babulu Reddy, learned counsel for the petitioner, that at the instance of the Railway Board, all the striking employees of the loco running staff were punished by the appointing authority in some form or other, that such of those employees who attained the age of 55 years were compulsorily retired, that some other employees were transferred to far off places and that those employees filed writ petitions in this Court challenging the said orders.

4. Writ Petitions 2458, 4153, 2491, 2455, 2607, 2611, 2612, 3705, 3374 and 3504 of 1981 filed by some of the other employees of the loco running staff who were compulsorily retired from service and who challenged the said orders of compulsory retirement were allowed by us by our judgment dated 14-10-1981. In and by the said judgment we held that the orders of compulsory retirement were made only to victimise and punish the employees for not responding to the call contained in the notice dated 2-2-81 issued by the Secretary of the Railway Board asking them to resume duty on the midnight of 2nd and 3rd February, 1981 that the notice was intended to be a threat to inflict punishment in case of defiance of the call contained therein and that the subsequent impugned orders of compulsory retirement passed by the appointing authority on the recommendation of the Committee consisting of the Chief Operating Superintendent and the Deputy Chief Personnel officer were mere mechanical acts in compliance with or in obedience to the direction given by the Secretary of the Railway Board.

5. It is urged by the learned Advocate-General appearing for the respondents that the petitioners acquired no rights to the posts they were reverted from, as they were appointed to the said posts on an officiating basis and that their appointments were terminable at any time without assigning any reason.

6. The decisions cited by the learned counsel appearing for the petitioner and the learned Advocate-General may now be noticed :

7. In *Union of India (UOI) and Another Vs. Gajendra Singh, etc., etc.,* , it was observed :

"Appointment to a post on an officiating basis is, from the nature of employment, itself of a transitory character and in the absence of any contract or a specific rule regulating the conditions of service to the contrary, the implied term of such an appointment is that it is terminable at any time. The Government servant so appointed acquires no right to the post."

8. In *Oil and Natural Gas Commission and Others Vs. Dr. Md. S. Iskender Ali*, it was held :

"The short history of the service of the respondent clearly shows that his work had never been satisfactory and he was not found suitable for being retained in service and that is why even though some sort of an enquiry was started, it was not proceeded with and no punishment was inflicted on him. In these circumstances, therefore, if the appointing authority considered it expedient to terminate the services of the respondent, a probationer, it cannot be said that the order of termination attracted the provisions of Art. 311 of the Constitution."

There Lordships add that in such a case, even if misconduct, negligence inefficiency might be the motive or the inducing factor which influenced the employer to terminate the services of the employee, a power which the employer undoubtedly possessed, even so as under the terms of appointment of the employee such a power flowed from the contract of service, the termination of service could not be termed as penalty or punishment.

9. In *Union of India (UOI) and Others Vs. P.S. Bhatt*, was observed :

"The law in relation to termination of services of an employee on probation is well-settled. If any order terminating the service of a probationer be an order of termination simpliciter without attaching any stigma to the employee and if the order is not an order by way of punishment, there will be no question of the provisions of Art. 311 being attracted."

10. In *P. L. Dhingra v. Union of India* 1958II L.L.J. 544, it was held that Art. 311 made no distinction between permanent and temporary posts and extended its protection equally to all Government servants holding permanent temporary posts of officiating in any of them and that the protection of Art. 311 was available only where dismissal or removal or reduction in rank was sought to be inflicted by way of punishment and not otherwise.

11. In *Jagdish Mitter Vs. The Union of India (UOI)*, their Lordships of the Supreme Court observed :

"No doubt the order purports to be one of discharge and, as such, can be referred to the power of the authority to terminate the temporary appointment

with one month's notice. But it seems to us that when the order refers to the fact that the appellant was found undesirable to be retained in Government service, it expressly casts a stigma on the appellant and in that sense, must be held to be an order of dismissal and not a mere order of discharge."

12. In *The Regional Manager and Another Vs. Pawan Kumar Dubey*, it was held that the sudden reversion of the respondent for the reason given in the order of reversion could be held to amount to an unjustified stigma which could not be said to be devoid of an element of punishment.

13. In *State of Maharashtra v. V. R. Saboji*, it was held.

"Even in the case of temporary or officiating Government servant his services cannot be terminated by way of punishment casting at stigma on him in violation of the requirement of Art. 311(2). This principle is beyond any dispute but the difficulty comes in the application of the said principle from case to case. If a Government servant is compulsorily retired or one who is officiating in a higher posts is reverted to his parent cadre, or when the services of an officiating or temporary Government servant are dispensed with by an order of termination simpliciter, then problems arise in finding out whether it is by way of punishment. In different kinds of situation, different views have been expressed. Yet the underlying principle remains the same. One should not forget a practical and reasonable approach to the problem in such cases Ordinarily and generally, and there may be a few exceptions, any of three courses indicated above is taken a recourse to only if there are some valid reasons for taking the action against the Government servant. If a probe in the matter is allowed to be made in all such cases then curious results are likely to follow. In a given case there may be valid reasons, may be of a serious kind which led the authorities concerned to adopt one course or the other as the of a particular case demanded. If one were to say in all such cases that the action has been taken by way of punishment then the natural corollary to this would be that such action could be taken by way of punishment then the natural corollary to this would be that such action could be taken if there was no such reason in the background of the action. Then the argument advanced is that the action was wholly arbitrary, mala fide and capricious and, therefore, it was violative of Art. 16 of the Constitution, Where to draw the line in such cases ? Ordinarily and generally the rule laid down in most of the cases by this Court is that you have to look to the order on the face of it and find out whether it casts any stigma on the Government servant. In such a case there is no presumption that the order is arbitrary or mala fide unless a very strong case is made out and proved by the Government servant who challenges such an order. The Government is on the horns of the dilemma in such a situation. If the reasons are disclosed, then it is said that the order of the Government was passed by way of punishment. If it does not disclose the reasons, then the argument is that it is arbitrary and violative of Art. 16. What the Government is to do in such a situation ? In my opinion, therefore, the correct and normal principle which can be culled out from the earlier decisions of

this Court is the one which I have indicated above."

14. In K.H. Phadnis Vs. State of Maharashtra, , it was held :

"Therefore, though the Government has a right to revert a Government servant from the temporary post to a substantive post, the matter has to be viewed as one of the substance and all relevant factors are to be considered in ascertaining whether the order is a genuine one of "accident of service" in which a person sent from the substantive post to a temporary post has to go back to the parent post without an aspersion against his character or integrity or whether the order amounts to a reduction in rank by way of punishment. Reversion by itself will not be a stigma. On the other hand, if there evidence, that the order of reversion is not "a pure accident of service" but an order in the nature of punishment Art. 311 will be attracted."

15. It may be thus noticed that where a Government servant officiating in a higher post may be reverted to his substantive lower post without casting any aspersion against character, Art. 311 of the Constitution is not attracted. But, where he is so reverted by way of punishment Art. 311 of the Constitution comes into play.

16. The only question that falls for our determination is whether the petitioners were all reverted from an officiating higher post to a substantive lower post by way of punishment.

17. The learned Advocate-General drew our attention to Rule 6, Railway Servants (Discipline and Appeal) Rules, 1968, which runs thus :

"6 Penalties. - (1) following penalties may, for good and sufficient reasons and as hereinafter provided be imposed on railway servant, namely :

Minor Penalties :

(i) censure;

(ii) Withholding of his promotion for a specified period;

(iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government or Railway Administration by negligence or breach of orders;

(iv) withholding of increments of pay for a specified period with further directions as to whether on the expiry of such period this will or will not have effect of postponing the future increments of his pay;

Major Penalties :

(v) reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;

(vi) reduction to a lower time-scale of pay grade, post or service, with or without further directions regarding conditions of restoration to the grade or post or service from which the railway servant was reduced and his seniority and pay on such restoration to that grade, post or service;

(vii) compulsory retirement;

(viii) removal from service which shall not be a disqualification for future employment under the Government or railway administration;

(ix) dismissal from service which shall ordinarily be a disqualification for future employment under the Government or railway administration;

Provided that in cases of persons found guilty of any act or omission which resulted or would have ordinarily resulted in collisions of railway trains, one of the penalties specified in cls. (viii) and (ix) shall ordinarily be imposed and in cases of passing railway signals at danger, one of the penalties specified in cls. (v) to (ix) shall ordinarily be imposed and where such penalty is not imposed, the reasons therefore shall be recorded in writing.

(2) Notwithstanding anything contained in sub-r. (1) the following minor penalties may, for hood and sufficient reasons and as hereinafter provided be imposed on a nongazetted railway servant, namely -

(i) withholding of the privilege of passes of Privilege Ticket Orders or both; and

(ii) fine

Explanation 1 : The following shall not amount to a penalty within the meaning of this rule, namely -

(i) withholding of increments of pay of railway servant for failure to pass any departmental examination in accordance with the rules or orders governing the service to which he belongs or post which he holds or the terms of his appointment;

(ii) stoppage of a railway servant at the efficiency bar in time-scale of pay on the ground of his unfitness to cross the bar;

(iii) non-promotion of a railway servant, whether in a substantive or officiating capacity, after consideration of his case, to a service, grade or post for promotion to which he is eligible;

(iv) reversion of a railway servant officiating in a higher service, grade or post to a lower service, grade or post, on the ground that he is considered to be unsuitable for such higher service, grade or post, or on any administrative ground unconnected with his conduct.

x x x x x x x x x"

and urged that a railway servant officiating in a higher post, if found to be

unsuitable, could be reverted to a lower post by the competent authority and that in such a situation the reversion would not amount to a penalty.

18. We may, however, point out that no reasons whatsoever were assigned in the impugned orders of reversion. The aggrieved employees officiating in higher posts were not even stated to be unsuitable for the higher posts. It cannot be contended that all the employees reverted from officiating higher posts were suddenly found unsuitable without reference to their conduct during the period of strike. The irresistible inference is as held by us in the other batch of writ petitions where some of the Railway servants were compulsorily retired, that the petitioners were reverted from officiating higher posts to the substantive lower posts by way of punishment as they abstained from duties during the period of strike.

19. The orders of reversion of the petitioners are, therefore, quashed. In the result the writ petitions are allowed, as prayed for with costs. Advocate's fee, Rs. 100 in each case.

20. An oral application is made on behalf of the respondent-Railways for leave to appeal to the Supreme Court. No question of law of general importance which requires consideration by the Supreme Court is involved in these writ petitions.

21. The oral application is rejected.